IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.192 OF 2006

Shri Trimbak Babu Aadarkar ...Appellant
Vs.
Shri Shankar Sagun Aadarkar & Anr. ...Respondents

Mr S.N. Deshpande for the Appellant.
None for the Respondent.

CORAM : A. S. OKA, J.
DATE : MARCH 14, 2006.

P.C.:

1. Heard Shri Deshpande for the Appellant. The Appellant is the original Defendant No.1. Decree for possession has been passed against the Appellant-Defendant No.1.

2. Shri Deshpande submitted that the Appellant has perfected his title to the suit land by adverse possession and therefore, decree for possession could not have been passed against the Appellant.

3. I have considered the submissions. The courts below have refused to accept the plea of adverse possession after considering the oral and documentary evidence on record. The courts below have come to the conclusion on the basis of documentary evidence on record that the structure of the Appellant was constructed as recently as in the year 1991. The suit for possession was filed in the year 1993.

4. Even assuming that the Appellant was in long standing possession, that by itself will not prove adverse possession.

5. There is no substantial question of law in view of the concurrent findings of the fact recorded by the courts below. Hence, Appeal is dismissed with no orders as to costs.

6. At this stage, Shri Deshpande, the learned Counsel appearing for the Appellant states that the Appellant is ready to give undertaking to remove the structure in the land and to handover possession of the land to the plaintiff and subject to accepting undertaking it may be directed that decree will not be executed for a reasonable period. Undertaking filed by the Appellant is taken on record and marked ‘X’ for identification. The undertaking is accepted. In view of the said undertaking, the decree will be executed till 31st January, 2007.

JUDGE